



DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS-2012-0074]

Privacy Act of 1974; Department of Homeland Security U.S. Immigration and Customs Enforcement-010 Confidential and Other Sources of Information System of Records

AGENCY: Department of Homeland Security, Privacy Office.

ACTION: Notice of Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update and reissue a current Department of Homeland Security system of records titled, “Department of Homeland Security/U.S. Immigration and Customs Enforcement-010 Confidential and Other Sources of Information System of Records.” This system of records allows the Department of Homeland Security/U.S. Immigration and Customs Enforcement to collect and maintain records concerning the identities of and information received from documented Confidential Informants and other sources who supply information to U.S. Immigration and Customs Enforcement regarding possible violations of law or otherwise in support of law enforcement investigations and activities. With the publication of this updated system of records, several changes are being made: (1) the categories of individuals are being updated; (2) new categories of records are being added; (3) routine uses are being updated; (4) new routine uses are being added to allow ICE to share information from the system; and (5) the retention period of records related to confidential and other sources is being updated. The exemptions for the existing system of records notice will continue to be applicable

for this system of records notice. This updated system will continue to be included in the Department of Homeland Security's inventory of record systems.

DATES AND COMMENTS: Submit comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. In particular, comments are requested concerning the application of the exemptions to the newly added categories of records. This updated system will be effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number DHS-2012-0074 by one of the following methods:

- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Fax: 202-343-4010.
- Mail: Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, D.C. 20528.

INSTRUCTIONS: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

DOCKET: For access to the docket to read background documents or comments received, please visit <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Lyn Rahilly, Privacy Officer, Immigration and Customs Enforcement, (202) 732-3300, 500 12th Street, SW, Washington, DC 20536-5004. For privacy questions,

please contact: Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office,
Department of Homeland Security, (202) 343-1717, Washington, D.C. 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. § 552a, the Department of Homeland Security (DHS) U.S. Immigration and Customs Enforcement (ICE) proposes to update and reissue a current DHS system of records titled, “DHS/ICE-010 Confidential and Other Sources of Information (COSI) System of Records,” 73 Fed. Reg. 237 (Dec. 9, 2008). This System of Records Notice (SORN) will update the categories of individuals, add new categories of records in the system, add and update routine uses, and update the retention period of records related to confidential and other sources. As a law enforcement investigatory agency, ICE collects and maintains information regarding possible violations of law from a number of sources, including Confidential Informants; federal, state, local, tribal, territorial, and foreign law enforcement agencies; and members of the public. This system of records allows ICE to collect and maintain records concerning the identities of and information received from documented Confidential Informants and other sources who supply information to ICE regarding possible violations of law or otherwise in support of law enforcement investigations and activities.

Categories of individuals have been updated in the DHS/ICE-010 COSI SORN to more accurately describe the individuals about whom ICE collects information. Previously categorized as “Non-Confidential Informants,” individuals who are not documented as Confidential Informants, but report information to ICE, are now

considered “Sources of Information,” while government personnel acting in their personal or professional capacities and law enforcement officers acting in their professional capacity are now separate categories of individuals.

Additionally, new categories of records have been added to more accurately reflect the types of information collected and maintained on Confidential Informants, Sources of Information, and government personnel and law enforcement officers. For Confidential Informants, fingerprints, handwriting samples, Alien Registration Numbers, copies of passports(s), immigration records, bank account information, date, informant was deactivated, special skills, and internal ICE memoranda and other reports have been added. For Sources of Information, criminal history information, date and place of birth, immigration history, documentation of information received and monetary payment, and internal ICE memoranda and other reports have been added. For government personnel and law enforcement officers, individual’s name, addresses, agency, nationality, and occupational information have been added.

Routine uses B and C are no longer being used in the DHS/ICE-010 COSI SORN. As a result, the lettering of the routine uses has been amended, and all routine uses following B and C have been shifted up two letters. Furthermore, new routine uses have been added to allow ICE to share information regarding confidential and other sources of information. Below is a summary of the new routine uses and their corresponding letters:

F. To federal, state, local, tribal, territorial, foreign, or international agencies for the purpose of obtaining information relevant and necessary to ICE’s decision whether an individual may act as a Confidential Informant;

G. To courts, magistrates, administrative tribunals, parties, and witnesses, in the course of immigration, civil, or criminal proceedings and when DHS determines that use of such records is relevant and necessary to the litigation before a court or adjudicative body;

H. To prospective claimants and their attorneys for the purpose of negotiating the settlement of an actual or prospective claim against DHS or its current or former employees, in advance of the initiation of formal litigation or proceedings;

I. To a former employee of DHS for purposes of responding to an official inquiry or facilitating communications with a former employee that may be relevant for personnel-related or other official purposes;

J. To international, foreign, intergovernmental, and multinational government agencies, authorities, and organizations to facilitate the testimony of a Confidential Informant in a criminal, civil, or administrative case;

K. To federal, state, local, tribal, territorial, or foreign government agencies, as well as to other individuals and organizations during the course of an investigation by DHS or during a proceeding within the purview of the immigration and nationality laws;

L. To federal, state, local, tribal, territorial, foreign, or international criminal, civil, or regulatory law enforcement authorities when the information is necessary for collaboration, coordination, and de-confliction of investigative matters, prosecutions, and/or other law enforcement actions;

N. To the Department of State when it requires information to consider and/or provide an informed response to a request for information from a foreign, international,

or intergovernmental agency, authority, or organization about an alien or an enforcement operation with transnational implications.

Finally, the retention period for records pertaining to Confidential Informants has been updated. Previously, the SORN stated that all records pertaining to confidential and other sources of information were maintained until the end of the fiscal year in which the related investigative file was closed, and records were transferred to the Federal Records Center five (5) years after the end of that fiscal year. ICE is proposing that electronic and paper records pertaining to Confidential Informants are maintained in active form at ICE Headquarters for five (5) years past the date of a Confidential Informant's deactivation in order to assist with any ongoing ICE investigations. The records will then be archived and retained at ICE Headquarters for an additional fifty (50) years, following which the records will be destroyed.

Portions of the DHS/ICE-010 COSI System of Records are exempt from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. Individuals may request information about records pertaining to them stored in the DHS/ICE-010 COSI System of Records as outlined in the "Notification Procedure" section below. ICE reserves the right to exempt various records from release. Pursuant to exemption 5 U.S.C. § 552a(j)(2) of the Privacy Act, portions of this system are exempt from 5 U.S.C. § 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g). Pursuant to 5 U.S.C. § 552a(k)(2), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. § 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f). In addition, to the extent a record contains information from other

exempt systems of records, ICE will rely on the exemptions claimed for those systems. The exemptions for the existing system of records notice will continue to be applicable for this system of records notice as published in the Federal Register on August 31, 2009 (74 Fed. Reg. 45083). In the context of this updated SORN, DHS is requesting comment on the application of these exemptions to the newly added categories of records. This system will continue to be included in the DHS's inventory of record systems.

Consistent with DHS' information-sharing mission, information stored in the DHS/ICE-010 COSI system of records may be shared with other DHS components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, information may be shared with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which federal government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other particular identifier assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records

maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/ICE-010 COSI System of Records.

In accordance with 5 U.S.C. § 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records

Department of Homeland Security (DHS)/U.S. Immigration and Customs Enforcement (ICE)-010

System name:

DHS/ICE-010 Confidential and Other Sources of Information (COSI)

Security classification:

Unclassified. Law Enforcement Sensitive (LES).

System location:

Records are maintained at ICE Headquarters in Washington, D.C. and at ICE field offices.

Categories of individuals covered by the system:

Categories of individuals covered by this system include:

(1) Confidential Informants: Individuals who have been documented as Confidential Informants and report information to ICE regarding possible violations of law or other information in support of law enforcement investigations and activities. Confidential Informants are members of the public acting in either their personal or professional capacities.

(2) Sources of Information: Individuals who are not documented as Confidential Informants as described in (1) above who report information to ICE regarding possible

violations of law or other information in support of law enforcement investigations and activities. These individuals are cooperating defendants to a criminal, civil, or administrative case or members of the public acting in either their personal or professional capacities.

(3) Federal, state, local, tribal, territorial, or foreign government personnel acting in their personal or professional capacities.

(4) Federal, state, local, tribal, territorial, or foreign law enforcement officers acting in their professional capacities.

(5) Individuals reported by Confidential Informants and Sources of Information or federal, state, local, tribal, territorial or foreign government personnel or law enforcement officers acting in their professional capacities: Individuals whose information is provided to ICE by the individuals described in (1), (2), and (3) above. These individuals are typically persons who are alleged to have engaged in, witnessed, or otherwise been associated with suspected illegal activity.

Categories of records in the system:

Categories of records in this system may include:

For Confidential Informants:

- Individual's name (actual or assumed);
- ICE Confidential Informant (identifying) number;
- Date ICE Informant number assigned;
- Date Informant was deactivated;
- Addresses;
- Nationality;

- Occupational information;
- Date and place of birth;
- Physical description of identifying features;
- Special skills (e.g., languages spoken, special certifications, areas of expertise);
- Photograph of Informant;
- Fingerprints;
- Handwriting sample;
- Identifying numbers, such as Social Security Number, Alien Registration Number, driver's license number, FBI number, and passport number;
- Immigration history;
- Criminal history information;
- Copy of driver's license;
- Copy of alien registration card;
- Copy of passport(s);
- Bank account information;
- Documentation of information received and the amount and date of any monetary payment made to the Informant; and
- Internal ICE memoranda and other reports pertinent to a confidential informant's eligibility, suitability, and identity.

For Sources of Information:

- Individual's name (actual or assumed);
- Addresses;

- Nationality;
- Occupational information;
- Criminal History Information;
- Date and place of birth;
- Immigration history;
- Documentation of information received and the amount and date of any monetary payment made to the Source; and
- Internal ICE memoranda and other reports pertinent to a Source's eligibility, suitability and identity.

For federal, state, local, tribal, territorial or foreign government personnel or law enforcement officers:

- Individual's Name (actual or assumed);
- Addresses;
- Agency;
- Nationality; and
- Occupational Information.

For individuals about whom information is provided:

- Individual's name (alleged violator, witness, interested parties, those connected with the investigation);
- Aliases;
- Addresses;
- Nationality;
- Occupational information;

- Date and place of birth;
- Physical description of identifying features;
- Photograph of the individual;
- Fingerprints;
- Handwriting sample;
- Identifying numbers, such as Social Security Number, Alien Registration Number, driver's license number, FBI/National Crime Information Center (NCIC) number, and passport number;
- Telephone numbers;
- Emergency contact information;
- Association/Organization memberships;
- Copy of alien registration card;
- Copy of driver's license;
- Registration number of vehicle, vessel, or aircraft;
- ICE Investigative case number;
- Internal DHS/ICE memoranda and related materials regarding possible violations of law;
- Criminal record information;
- Financial record information;
- Documentation of information received from Confidential Informants, agencies and other individuals;
- The ICE office receiving the information; and
- ICE Duty Agent Log of information received, which contains some or all of

the specific data listed above.

Authority for maintenance of the system:

8 U.S.C. § 1357 and 19 U.S.C. § 1589a.

Purpose(s):

The purpose of this system is to document and manage the identities of and information received from a number of sources, including Confidential Informants, regarding possible violations of law or other information in support of law enforcement investigations and activities conducted by ICE.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. § 552a(b) of the Privacy Act, all or a portion of the records of information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. § 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including U.S. Attorney Offices, or other federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant and necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;
2. any employee or former employee of DHS in his/her official capacity;
3. any employee or former employee of DHS in his/her individual capacity

where DOJ or DHS has agreed to represent the employee; or

4. the United States, or any agency thereof.

B. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

C. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise there is a risk of identity theft or fraud, harm to economic or property interests, harm to an individual, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and

3. the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

D. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

E. Where a record, either on its face or in conjunction with other information, indicates a violation of law, rule, regulation, or order, which includes criminal, civil, or regulatory violations, and such disclosure is proper and consistent with the official duties

of the person making the disclosure, a disclosure may be made to federal, state, local, tribal, territorial, international, or foreign law enforcement agencies or other appropriate authorities charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order.

F. To federal, state, local, tribal, territorial, foreign, or international agencies for the purpose of obtaining information relevant and necessary to ICE's decision whether an individual may act as a Confidential Informant.

G. To courts, magistrates, administrative tribunals, parties, and witnesses, in the course of immigration, civil, or criminal proceedings (including discovery, presentation of evidence, and settlement negotiations) and when DHS determines that use of such records is relevant and necessary to the litigation before a court or adjudicative body when any of the following is a party to or have an interest in the litigation:

- (1) DHS or any component thereof;
- (2) any employee of DHS in his/her official capacity;
- (3) any employee of DHS in his/her individual capacity where the government has agreed to represent the employee; or
- (4) the United States, where DHS determines the litigation is likely to affect DHS or any of its components.

H. To prospective claimants and their attorneys for the purpose of negotiating the settlement of an actual or prospective claim against DHS or its current or former employees, in advance of the initiation of formal litigation or proceedings.

I. To a former employee of DHS for purposes of responding to an official inquiry by federal, state, local, tribal, or territorial government agencies or professional licensing

authorities or facilitating communications with a former employee that may be relevant and necessary for personnel-related or other official purposes where DHS requires information nor consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

J. To international, foreign, intergovernmental, and multinational government agencies, authorities, and organizations to facilitate the testimony of a Confidential Informant in a criminal, civil, or administrative case in which the Confidential Informant is a cooperating witness or party.

K. To federal, state, local, tribal, territorial, or foreign government agencies, as well as to other individuals and organizations during the course of an investigation by DHS or the processing of a matter under DHS's jurisdiction, or during a proceeding within the purview of the immigration and nationality laws, when DHS deems that such disclosure is necessary to carry out its functions and statutory mandates or to elicit information required by DHS to carry out its functions and statutory mandates.

L. To federal, state, local, tribal, territorial, foreign, or international criminal, civil, or regulatory law enforcement authorities when the information is necessary for collaboration, coordination, and de-confliction of investigative matters, prosecutions, and/or other law enforcement actions to avoid duplicative or disruptive efforts and to ensure the safety of law enforcement officers who may be working on related law enforcement matters.

M. To federal and foreign government intelligence or counterterrorism agencies or components where DHS becomes aware of an indication of a threat or potential threat

to national or international security, or where such disclosure is to support the conduct of national intelligence and security investigations or to assist in anti-terrorism efforts.

N. To the Department of State when it requires information to consider and/or provide an informed response to a request for information from a foreign, international, or intergovernmental agency, authority, or organization about an alien or an enforcement operation with transnational implications.

O. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Disclosure to consumer reporting agencies:

None.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD-ROM.

Retrievability:

Records for Confidential Informants are retrieved by ICE by their numerical

identifier or the associated ICE investigative case number. Other source records are retrieved by ICE investigative case number, individual's name or alias (source, subject or other person connected with the investigation), the ICE field office which received the information, and the date the information was received.

Safeguards:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated system security access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

Retention and disposal:

ICE is seeking approval for a records retention schedule for the records described in this system of records. ICE proposes to maintain both electronic and paper-based records pertaining to Confidential Informants in active form at ICE Headquarters for five (5) years past the date of an individual's deactivation from being a Confidential Informant. The records will then be archived and retained at ICE Headquarters for an additional fifty (50) years, following which the records will be destroyed.

The retention and disposal period listed in the existing system of records notice will continue to be applicable for paper-based records pertaining to Confidential Informants maintained at ICE field offices as well as records pertaining to Non-Confidential Sources and individuals reported by Confidential Informants and Non-Confidential Sources. Records are maintained until the end of the fiscal year in which

the related investigative file is closed. The records are then transferred to the Federal Records Center five (5) years after the end of that fiscal year. The records are then destroyed fifty (50) years after the end of the fiscal year in which the related investigative file is closed. Disposal of paper files occurs by burning or shredding; electronic data is disposed of using methods approved by the DHS Chief Information Security Officer.

System Manager and address:

Deputy Assistant Director, Investigative Services Division, Office of Investigations, ICE Headquarters, Potomac Center North, 500 12th St., SW, Washington, D.C. 20024.

Notification procedure:

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system. However, DHS/ICE will consider individual requests to determine whether or not information may be released. Thus, individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to ICE's FOIA Officer, whose contact information can be found at <http://www.dhs.gov/foia> under "contacts." If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, U.S. Department of Homeland Security, 245 Murray Drive, S.W., Building 410, STOP-0550, Washington, D.C. 20528.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act

regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, <http://www.dhs.gov/foia> or 1-866-431-0486. In addition you should:

- Explain why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records.

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without the above information, the component(s) will not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

Record access procedures:

See “Notification procedure” above.

Contesting record procedures:

See “Notification procedure” above.

Record source categories:

Records are obtained from other federal, state, local, tribal, and territorial law enforcement agencies, Confidential Informants, and any other sources of information including members of the public.

Exemptions claimed for the system:

Pursuant to exemption 5 U.S.C. § 552a(j)(2) of the Privacy Act, portions of this system are exempt from 5 U.S.C. § 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5) and (e)(8); (f), and (g). Pursuant to 5 U.S.C. § 552a(k)(2), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. § 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f). When a record received from another system has been exempted in that source system under 5 U.S.C. § 552a(j)(2), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions set forth here.

Dated: January 24, 2013.

Jonathan R. Cantor,

Acting Chief Privacy Officer,

Department of Homeland Security.

[FR Doc. 2013-02343 Filed 02/01/2013 at 8:45 am; Publication Date: 02/04/2013]